

BANKRUPTCY REFERENCE MANUAL

March, 2003

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
NOTICE**

This Desk Reference Manual is not intended to be a source of additional technical requirements, nor the basis for technical challenges to bankruptcy filings. It was developed in the hope that it would assist practitioners in the United States Bankruptcy Court for the Middle District of Georgia, and was prepared using information, policies, and procedures in effect as of May 1, 1998.

Consequently, this manual shall not be cited to the court as a ground for striking or otherwise objecting to the form or content of a pleading or other filings, nor should it be cited as support for such filings. The legal sufficiency of any matter filed in the court is determined solely by reference to the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Local Rules of the Court, and any general orders of the United States Bankruptcy Court for the Middle District of Georgia.

Material contained in this manual represents suggestions concerning preferred practices in the court. This manual is subject to change as laws, regulations, policies and procedures which affect operations in this court change.

WILLIAM E. TANNER
CLERK OF COURT

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I. BANKRUPTCY COURT AT A GLANCE

Business Hours of the Court

The public business hours of the Office of the Clerk are 8:30 a.m. to 5:00 p. m., Eastern Time, all days except Saturday, Sunday and federal holidays. In an emergency and subject to review by the court, papers may be filed at other times by making prior arrangements with the clerk or chief deputy.

Judges

The Honorable Robert F. Hershner, Jr., Chief Judge
 The Honorable John T. Laney, III
 The Honorable James D. Walker, Jr.

Clerk of Court

William E. Tanner

Mailing Address of the Court

Macon Office: P. O. Box 1957, Macon, GA 31202

Columbus Divisional Office: P. O. Box 2147, Columbus, GA 31902

Telephone Numbers - Clerk's Office

Macon Office

912-752-3506

Extension

Chief Deputy	3341
Administrative Secretary	3358
Financial Deputy	3343
Courtroom Deputy (Judge Hershner)	3346
Calendar Clerk (Judge Hershner)	3333
Courtroom Deputy/Calendar Clerk (Judge Walker)	3345
Personnel Specialist	3323
Procurement Deputy	3331

Columbus Office

706-649-7837

Extension

Deputy in Charge	4424
Court Support (Judge Laney)	4432
Financial Deputy	4444

Court Hearing Locations

Albany Division	C. B. King U.S. Courthouse 2 nd Floor 201 Broad Avenue Albany, GA 31701
Athens Division	United States Courtroom U.S. Post Office Building 115 E. Hancock Ave. Athens, GA 30601
Columbus Division	U. S. Courtroom One Arsenal Place, Suite 309 901 Front Ave. Columbus, GA 31901
Macon Division	U. S. Courtroom A (Judge Hershner) or Courtroom B (Judge Walker) 433 Cherry St. Macon, GA 31201
Thomasville Division	U. S. Courtroom Third Floor U. S. Courthouse and Post Office Building Thomasville, GA 31799
Valdosta Division	U. S. Courtroom U. S. Courthouse and Post Office Building 401 N. Patterson St. Valdosta, GA 31601

While hearings are scheduled in all six divisions, the only staffed offices are in Macon and Columbus.

341 Meeting Locations

Albany Division	Albany Board of Realtors, Inc. Bldg. 2325 Lake Park Drive Albany, GA 31707
Athens Division	The Classic Center 300 North Thomas Street Athens, GA 30601
Columbus Division	The Rankin Building #7 10 th Street Columbus, GA 31901

Macon Division	341(a) Meeting Room 433 Cherry St. First Floor, Suite C Macon, GA 31201
Thomasville Division	U. S. Courthouse and Post Office Building Room 311 Thomasville, GA 31799
Valdosta Division	U. S. Courthouse and Post Office Building Room 257 401 N. Patterson St. Valdosta, GA 31601

United States Trustee and Trustees

The addresses and telephone numbers for the U. S. Trustee and all Assistant U. S. Trustees who may be involved in cases in the Middle District of Georgia can be found in the **CLERK'S INSTRUCTIONS**.

Trustees:

Ernest V. Harris
Chapter 7 - Athens
P. O. Box 1586
Athens, GA 30603 (706-613-1953)

Camille Hope
Chapter 13 - Macon, Athens
P. O. Box 954
Macon, GA 31202 (478-742-8706)

Walter W. Kelley
P. O. Box 70879 - Ch. 7 Thomasville, Valdosta
P. O. Box 70849 - Ch. 12 - All Divisions
Albany, GA 31708
229-888-9128 (Chapter 7 Cases)
229-888-2257 (Chapter 12 Cases)

Kristin Smith
Chapter 13 - Albany, Columbus, Thomasville, Valdosta
P. O. Box 1907
Columbus, GA 31902 (706-327-4151)

J. Coleman Tidwell
Chapter 7 - Macon, Columbus
P. O. Box 1796
Macon, GA 31202 (478-743-3890)

Joy R. Webster
Chapter 7 - Macon, Columbus
P. O. Box 1098
Macon, GA 31202 (478-742-1889)

Paul Cames
Chapter 7 - Albany
P. O. Box 8499
Warner Robins, GA 31095 (478-922-0922)

David Mullis
Chapter 7 - Albany
1102 Williams Street
P. O. Box 945
Valdosta, GA 31603-0945 (912-219-0014)

William M. Flatau
Chapter 7 - Athens, Macon
355 Cotton Avenue
Macon, GA 31201 (478-742-6481)

Federal Holidays

The United States Bankruptcy Court closes in observance of the following federal holidays:

New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

Form of Filing Fees and Miscellaneous Fees

Payments to the court can be made by:

1. Cash (**Exact change required**) (**DO NOT MAIL CASH**)
2. Money Order
3. Certified check drawn on a bank which is a member of the Federal Reserve system
4. Check drawn upon the account of an attorney or other entity whose check is acceptable to the clerk

All checks or money orders must be payable to the "**Clerk, United States Bankruptcy Court.**"

No check or money order should be payable in an individual court employee's name.

(See **CLERK'S INSTRUCTIONS** for fee schedule)

Case/Judge Assignment

Upon the filing of a petition, the case is assigned promptly to a Bankruptcy Judge. Unless there is a conflict of interest, cases are assigned as follows:

THE HONORABLE ROBERT F. HERSHNER, JR.

- C Athens Division - All cases
- C Macon Division - All chapters - random assignment

THE HONORABLE JOHN T. LANEY, III

- C Albany Division - All Chapter 11 and 12 cases
- C Columbus Division - All cases
- C Thomasville Division - All cases
- C Valdosta Division - All cases

THE HONORABLE JAMES D. WALKER, JR.

- C Albany Division - All Chapter 7 and 13 cases
- C Macon Division - All chapters - random assignment

Division Numbers/Assignment of Case Numbers

Each division is assigned a division number:

!	Albany	-	1
!	Athens	-	3
!	Columbus	-	4
!	Macon	-	5
!	Thomasville	-	6
!	Valdosta	-	7

The division number is always a part of the case number and is the first number after the dash, i.e., 98-40493. Also, the case number must include the initials of the judge assigned to the case, i.e., 97-40493 JTL or 97-10493 JDW or 97-50493 RFH. Please include the judge's initials as a part of the case number when filing all pleadings.

Divisions and Counties in each Division

The counties included in each of the six divisions can be found in the **CLERK'S INSTRUCTIONS**.

Miscellaneous Forms Found in the Clerk's Instructions and on the court's web page

- < Final Report and Application for Final Decree in Chapter 11
- < Chapter 13 Plan
- < Request to Expedite Appeal
- < Ballot Summaries
- < Certification Regarding Request For Expedited Hearing
- < Certification Regarding Undeliverable Notices

In addition to the above, the Archive Retrieval Form is available in the Clerk's Office.

Official Forms Available from the Clerk's Office

- < Application to Pay Fees in Installments
- < Subpoena for Rule 2004 Examination
- < Subpoena in an Adversary Proceeding
- < Subpoena in a Case under the Bankruptcy Code
- < Transcript Order
- < Tape Order
- < Proof of Claim
- < Adversary Cover Sheet
- < Certification of Judgment for Registration in Another District
- < Exemplification

PACER

Access to the court's Public Access to Court Electronic Records (PACER) is available to those interested in accessing the system. The purpose of the system is to allow parties to retrieve electronic case summaries, docket and claims information.

A party can search for a case by participant's name or case number. Once the desired case is located, basic case information and a listing of the case docket entries are available. The progress of a case can be easily tracked.

In addition, case filing information has now been consolidated into a national database. A party can search for a case filing by participant's name or social security number. If a match is found, the party will be given the case number and the district in which the case was filed.

The fee for both services is \$.60 per minute. If you would like to register for these services, please contact the PACER Service Center at the following address:

PACER Service Center
P. O. Box 780549
San Antonio, TX 78278-0549
1-800-676-6856

Computers in the public area of the Clerk's Office in Macon and Columbus may be used without charge.

VCIS

The Voice Case Information System (VCIS) allows an individual to access bankruptcy case information by using a touch tone telephone. The user can query the court's computer by debtor name, or social security number, or case number. Once the desired case is located, basic case information including filing date, chapter, attorney, trustee, judge, and certain deadline information is available. VCIS can be reached by dialing 912-752-3506 and following instructions from the telephone system's auto-attendant, or by directly dialing 912-752-8183. The toll free VCIS telephone number is 1-800-211-3015.

Internet Web Page

The Clerk's Office has established an Internet web page where important and useful information can be found. As mentioned above, some miscellaneous and official forms can be found there. In addition, court calendars, employee telephone extensions, fee schedules, filing checklists, local rules, and statistical data have been included. This web site is relatively new, but we intend to develop it into a major source of information for those who have or wish to have access to such information. The court's web page can be accessed at **www.gamb.uscourts.gov**.

II. FILING INFORMATION AND REQUIREMENTS

Commencement of Case

A bankruptcy case, voluntary or involuntary, is commenced by filing a petition with the Clerk of the Bankruptcy Court. 11 U.S.C. §301-303; FRBP 1002. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor. In a Chapter 11 case, the petition shall also be accompanied by a list of the 20 largest unsecured creditors. FRBP 1007(d). The filing of the petition marks a point in time from which many events are measured, and the filing or non-filing of the petition may decisively affect rights of creditors and debtors. Normally, even a defective petition is accepted for filing and a deadline is then given for correcting any deficiencies.

District Where Petition Should be Filed

The provisions which specify the judicial district in which a petition must be filed are set forth in 28 U.S.C. §1408. The statutory provisions relating to the venue of bankruptcy matters are summarized below:

A case may be commenced under Title 11 in the District Court (i.e., Bankruptcy Court) in which:

- (1) the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the debtor have been located for the 180 days immediately preceding commencement of the case, or for a longer portion of the 180-day period than the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the debtor were located in any other district; or
- (2) a case is pending under Title 11 concerning the debtor's affiliate, general partner, or partnership.

Official Forms must be used

FRBP 9009 prescribes that the Official Forms "shall be observed and used with alterations as may be appropriate." Printed versions of the Official Forms are produced by commercial legal printers or office supply stores. They are also available through various computer software packages.

Petitions must be verified and signed

The petition must be verified by the petitioner or contain an unsworn declaration as provided in 28 U.S.C. §1746, FRBP 1008. Additionally, if the debtor is represented by counsel, counsel must personally sign the petition. FRBP 9011(a). Only the original petition needs to be verified and signed; however, all copies must conform to the original. FRBP 9011(c). If photocopy process is used, all copies must be legible. To aid in the identification of originals and copies, it is desirable that originals be signed in blue ink.

Types of Cases

- Chapter 7** - Orderly liquidation of debtor's non-exempt assets by a trustee and the equitable distribution of the proceeds to creditors. An involuntary petition is permitted under this chapter. 11 U.S.C. §303(a).

- Chapter 9** - Allows a municipal unit to continue to operate while it adjusts or refinances creditors' claims with minimum loss to its creditors. An involuntary petition is not permitted under this chapter. 11 U.S.C. §303(a).

- Chapter 11** - Business reorganization which permits a debtor to restructure its finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders. Individuals may also file a petition under Chapter 11 to work out a resolution of debt. Chapter 11 can also be used as a method of liquidation through a plan. An involuntary petition is permitted under this chapter. 11 U.S.C. §303(a).

- Chapter 12** - Adjustment of debts of a family farmer with a regular annual income. 11 U.S.C. §109(f). It is designed to meet the needs of the family farmer while preserving the rights of farm lenders. The aggregate debt of a family farmer must be less than \$1,500,000, and there are detailed restrictions on the nature of the debt. 11 U.S.C. §101(17). An involuntary petition is not permitted under Chapter 12. 11 U.S.C. §303(a).

- Chapter 13** - Adjustment of debts of an individual with regular income. 11 U.S.C. §109(e). This chapter is available only to individuals and their spouses, but may include business debts of such individuals. Chapter 13 is, however, limited to those individuals whose noncontingent, liquidated, unsecured debts are less than \$250,000 and noncontingent, liquidated, secured debts are less than \$750,000. 11 U.S.C. §109(e). An involuntary petition is not permitted under Chapter 13. 11 U.S.C. §303(a).

Multiple Entities as Debtor

The clear implication of §301 and §302 of the Code is that only one entity may be a debtor in one case, except for a husband and wife filing jointly. Thus, a petition captioned as:

**John J. Jones
Jones & Sons, Inc.**

is not valid, at least in terms of having effectively commenced a case as to both the individual and the corporation.

Joint Cases

A joint case may be filed by debtor and debtor's spouse under each chapter by filing a single petition. 11 U.S.C. §302. Note, however, that a spouse cannot be added by amendment after the case is filed. A separate case must be filed by the spouse in this instance, and the full filing fee paid.

Involuntary petitions against both a husband and wife require the filing of two separate petitions and the paying of two filing fees.

Order for Relief

In a voluntary case, the filing of the petition constitutes an order for relief. 11 U.S.C. §301. Thus, no actual "Order for Relief" is entered.

In an involuntary case, however, an actual order for relief is entered when either: (a) the petition is not timely controverted; or (b) the statutory grounds for entry of the order are established after trial. 11 U.S.C. §303(h). *Bankruptcy Reform Act of 1994, increased dollar amounts in involuntary cases to require that involuntary petitions by three or more creditors must have aggregate claims of at least \$10,000 more than the value of any lien, and if there are fewer than 12 creditors, by one or more creditors holding a claim in the aggregate of at least \$10,000 of such claims.*

Filing a Voluntary Case

In a Chapter 7, 11, 12, and 13 case, the following documents are required and must be filed with the petition unless a later time is indicated below. The original and required number of copies of the petition and accompanying papers shall be assembled into separate sets, each set securely stapled in the following order with exceptions as noted:

Voluntary Petition

- < Chapter 13 Plan (only in Chapter 13 cases) **(should be filed loose)**
- < Statement of Attorneys Fees pursuant to Bankruptcy Rule 2016(b)

Application to Pay Fees in Installments and Proposed Order (only when fee is to be paid in installments) **(should be filed loose)**

List of 20 Largest Unsecured Creditors (only in Chapter 11 cases)

, Schedules

- C Summary
- C Schedule A - Real Property
- C Schedule B - Personal Property
- C Schedule C - Property Claimed as Exempt
- C Schedule D - Creditors Holding Secured Claims
- C Schedule E - Creditors Holding Unsecured Priority Claims
- C Schedule F - Creditors Holding Unsecured Nonpriority Claims
- C Schedule G - Executory Contracts and Unexpired Leases
- C Schedule H - Codebtors
- C Schedule I - Current Income of Individual Debtor(s)
- C Schedule J - Current Expenditures of Individual Debtor(s)
- C Unsworn Declaration under Penalty of Perjury

, Statement of Financial Affairs

Chapter 7 Individual Debtor's Statement of Intentions. (To be filed with petition or within 30 days of filing or by the Meeting of Creditors, whichever is earlier) 11 U.S.C. §521(A).

Notice to Individual Consumer Debtor

Creditor Matrix **(leave loose)**

- , If petition is accompanied by a list of creditors and their addresses, schedules and statement of affairs must be filed within 15 days. FRBP 1007. Plan and Statement of Attorneys Fees must be filed with petition or within 15 days. FRBP 3015(b) and FRBP 2016(b).

IT IS RECOMMENDED THAT FORMS BE PRINTED ON ONE SIDE OF THE PAPER ONLY. IT IS ALSO HELPFUL IF EACH PAGE IS PREPUNCHED WITH TWO HOLES AT THE TOP TO FACILITATE THE SECURING OF PAPERS IN THE FILE.

Individual checklists for the voluntary filing of all chapters (as well as adversary proceedings) can be found in the **CLERK'S INSTRUCTIONS**.

Filing an Involuntary Petition

Involuntary Petitions (Official Form B5) may be filed in Chapter 7 or Chapter 11 cases. The filing fee must accompany the petition. Upon filing, the clerk will issue a summons to be served by the petitioner. If an order for relief is entered, the debtor shall file within 15 days the following documents assembled in separate sets, each set securely stapled in the following order:

Statement of Attorneys Fees (Pursuant to Bankruptcy Rule 2016(b))
 List of 20 Largest Unsecured Creditors (Only in Chapter 11 cases)
 Schedules
 Summary
 C Schedule A - Real Property
 C Schedule B - Personal Property
 C Schedule C - Property Claimed as Exempt
 C Schedule D - Creditors Holding Secured Claims
 C Schedule E - Creditors Holding Unsecured Priority Claims
 C Schedule F - Creditors Holding Unsecured Nonpriority Claims
 C Schedule G - Executory Contracts and Unexpired Leases
 C Schedule H - Codebtors
 C Schedule I - Current Income of Individual Debtor(s)
 C Schedule J - Current Expenditures of Individual Debtor(s)
 C Unsworn Declaration under Penalty of Perjury
 Statement of Financial Affairs
 Chapter 7 Individual Debtor's Statement of Intentions (only in Chapter 7 cases)
 Creditor Matrix (leave loose)

IT IS RECOMMENDED THAT FORMS BE PRINTED ON ONE SIDE OF THE PAPER ONLY. IT IS ALSO HELPFUL IF EACH PAGE IS PREPUNCHED WITH TWO HOLES AT THE TOP TO FACILITATE THE SECURING OF PAPERS IN THE FILE.

Copies Required

Chapter 7 - Original plus 2 copies
 Chapter 11 - Original plus 3 copies
 Chapter 12 - Original plus 2 copies
 Chapter 13 - Original plus 2 copies

Filing Fees Required

The petition must be accompanied by a filing fee or an application to pay fees in installments with proposed order. The following filing fees are required in accordance with 28 U.S.C. §1930(a):

- Chapter 7 - \$200 (includes \$30 administrative fee and \$15 Trustee surcharge)
- Chapter 13 - \$185 (includes \$30 administrative fee)
- Chapter 11 - \$830 (includes \$30 administrative fee)
- Chapter 12 - \$230 (includes \$30 administrative fee)

All checks or money orders for filing fees must be payable to “Clerk, U. S. Bankruptcy Court.”

PERSONAL CHECKS ARE NOT ACCEPTED. Payment of filing fees in installments is permitted only in voluntary petitions filed by an individual. The number of installments proposed by the petitioner must not exceed four (4), with final installment payable not later than 120 days after filing. FRBP 1006(b). The application to pay in installments must include the dates of the proposed payment schedule.

ELECTRONIC FILING - FAX POLICY (LBR 5005-4)

RECEIPT OF FACSIMILE FILINGS: Subject to requirements of this rule, a pleading, complaint, petition or other document to be filed with the court may be accepted as timely filed by transmission to the court through a facsimile machine. No facsimile pleading or document will be accepted or deemed filed without prior approval.

APPROVAL OF FACSIMILE: The pleading, complaint, petition or other document to be filed must be authorized to be received for filing by a judge of this court, the Clerk of Court, or by the clerk’s designee. Such authorization must be obtained prior to the sending of the document and must be based on a showing of time critical need.

PROCEDURE FOR FILING FACSIMILE DOCUMENTS: The facsimile copy sent to the court must include (1) a cover sheet that includes a brief statement of the time critical status of the pleading, complaint, petition or other document, (2) the reason the original cannot be filed timely and, (3) the identification of the court individual authorizing its receipt. This cover sheet will be filed with the pleading in the case file. The party sending the facsimile document is solely responsible for insuring that it is fully and accurately received. The docketing of the document will reflect that it is a facsimile document, the name of the court employee who authorized the receipt of the document, and the name of the attorney or other individual who sent the document.

FILING OF ORIGINAL DOCUMENTS: The original of the pleading, complaint, petition or other document submitted by facsimile must be filed with the court by mail, courier or other means with the assurance that the document(s) will be received by the court within 48 hours of the facsimile transmission.

FACSIMILE FILING FEE: A fee for the acceptance of facsimile documents shall be paid to the Clerk’s Office at the time of the filing of the original documents. The amount of the filing fee is available from the fee schedule in the **CLERK’S INSTRUCTIONS**.

AMENDMENTS TO PETITIONS

The general rule is that a debtor may amend a voluntary petition, list, schedule, or statement of financial affairs as a matter of course at any time before the case is closed. FRBP 1009(a). There are two notable exceptions to this rule:

- Ⓒ The period for amending the statement of intentions is limited to 45 days after the filing of the statement, unless the court grants an extension. FRBP 1009(b); and
- Ⓒ A voluntary petition of an individual cannot be later amended to include the non-filing spouse. The non-filing spouse must file a new petition and pay the full filing fee.

Amendments shall be verified by the debtor. FRBP 1008.

Notice of Amendment

When an amendment is made as a matter of course by the debtor, the debtor must give notice to the trustee and to any entity affected thereby. FRBP 1009(a). A certificate of service must be attached to the amendment. When an amendment is ordered as a result of a motion by a party in interest, the clerk is required to give notice to the entities designated by the court. FRBP 1009(a).

Fees for Amendments

The Judicial Conference's miscellaneous fee schedule prescribes a fee of \$20 for amendments to a debtor's schedule of creditors or list of creditors. This is the only instance where an amendment fee is required.

PROOFS OF CLAIM

Filing and Service of Proofs of Claim

- Ⓒ **INTEREST:** All claims filed shall conform with § 502 of the Code and with the applicable Federal Rules of Bankruptcy Procedure, and may not include any claim for unmatured interest. Any creditor who calculates interest by using the "add on interest" method shall rebate interest from its claim by using the pro rata method. LBR 3001-1(a).
- Ⓒ **SERVICE OF COPIES:** Every creditor filing a proof of claim in a Chapter 12 case shall file the original proof of claim with the court and shall serve a duplicate of the claim with all attachments on the Chapter 12 trustee. LBR 3001-1(b).
- Ⓒ **EXTENSION OF TIME TO FILE:** Upon the filing of an amendment adding a creditor to a bankruptcy case, that creditor will be allowed 60 days from the date of the filing of the amendment or by the original bar date set for the filing of claims, whichever occurs last, to file a proof of claim. LBR 3001-1(c).

Who May Execute a Proof of Claim

A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in FRBP 3004 and 3005. FRBP 3001(b). FRBP 3004 permits a debtor or trustee to file a proof of claim for a creditor within 30 days after expiration of the time for filing claims when none has been filed on behalf of the

creditor by the first date set for the meeting of creditors. When the debtor/trustee files a claim on behalf of a creditor, the creditor must have been **previously** scheduled and properly notified. Also, debtor-filed claims should be **legible** (typewritten) and full name, address, zip code and exact amount of claim shown. FRBP 3005 provides that a co-debtor or one who has pledged security to a creditor may file a proof of claim in the name of the creditor, if the creditor did not file a claim pursuant to FRBP 3002(c) or 3003(c).

Evidence of Perfection of Security Interest

If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest is perfected. FRBP 3001(d).

Time for Filing Claims

Chapter 7 , A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

In a Chapter 7 liquidation case, the notice of the meeting of creditors includes a statement to the effect that it is not necessary to file claims and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims. FRBP 2002(e). DO NOT FILE CLAIMS UNTIL GIVEN NOTICE TO DO SO.

Chapter 11 , Pursuant to FRBP 3003(b)(1) the schedule of liabilities filed pursuant to §521(1) of the Code shall constitute prima facie evidence of the validity and amount of claims of creditors, unless they are scheduled as disputed, contingent or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim except where creditor's or equity security holder's claim or interest is not scheduled or scheduled as disputed, contingent or unliquidated or, the amount scheduled is not correct. FRBP 3003(c)(2). A proof of claim or interest executed and filed by a creditor or equity security holder supersedes any scheduling of that claim or interest. FRBP 3002(c)(4).

For all bankruptcy petitions filed in Chapter 11 of the U.S. Bankruptcy Code, the bar date for filing of proofs of claim or interest shall be 90 days from the first scheduled meeting of creditors. For cause shown, the court will consider extending the time to file proofs of claim upon the filing of an appropriate motion or request within the 90-day period. LBR 3001-1(d).

Chapter 12 , A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

Chapter 13 , A proof of claim shall be filed within 90 days after the first date set for the 341 Meeting of Creditors. See FRBP 3002(c) for exceptions.

, Pursuant to Section 213 of the Bankruptcy Reform Act of 1994, governmental units have 180 days from the order for relief to file claims. According to opinion of the Bankruptcy Division of the Administrative Office, in converted cases governmental units have 180 days from the order for relief in the original chapter, 90 days after the first meeting under the new chapter, or time fixed by court, whichever is greater, to file their claims. 11 U.S.C. §509(b)(9).

Place for Filing Claims

Please refer to Page 1 for the proper address to send claims to. Claims should be sent to the office in which the case has been assigned.

Examining Claims

Claims filed in all Chapter 7, Chapter 11, and Chapter 12 cases may be examined in the Clerk's Office. In all Chapter 13 cases filed in the Albany, Athens and Macon divisions, the assigned Chapter 13 Trustee maintains the claims until dismissal or conversion of the case. The Chapter 13 Trustee shall make these claims available for inspection. Upon dismissal or closing, claims are returned to the clerk and are placed in the case file. Claims filed in Chapter 13 cases filed in the Columbus, Thomasville and Valdosta divisions may be examined in the Clerk's Office in Columbus.

Objections to Claims

- C **GENERALLY:** Pursuant to §502(a) a claim or interest, proof of which is filed under §501, is deemed allowed unless a party in interest objects.

An objection to the allowance of a claim must be in writing and filed with the court. FRBP 3007. There is no prescribed form for filing an objection to a claim, but it should state the reason for objecting. Although the right to object to a claim is generally exercised by the trustee or debtor-in-possession, any party in interest may object to the allowance of a claim. 11 U.S.C. §502(a). *Section 213 of the Bankruptcy Reform Act amends section 502(b) of the Bankruptcy Code to add late filing of a proof of claim as a ground for objecting to the allowance of a claim.*

- C **RESPONSE TIME:** Objections to claims shall be served pursuant to LBR 9004-1 and LBR 9007-1. A respondent shall have 30 days to file a written response. The United States or an officer or agent thereof shall respond not later than 35 days after service of the objection. LBR 3007-1(a).
- C **PROPOSED ORDER:** If the respondent to an objection to claim does not file a response within a time specified herein, the objecting party shall promptly file a proposed order adjusted to the facts alleged in the objection. LBR 3007-1(b).
- C **NOTICE OF HEARING:** A respondent shall contact the Bankruptcy Court and obtain a hearing date and shall serve notice of that hearing date at the same time as the response is served. If the respondent is pro se, the clerk will issue and serve notice of the hearing date to consider the objection and response. LBR 3007-1(c).
- C **NOTICE OF TIME TO OBJECT:** The objecting party shall inform the respondent of the requirements of this rule by serving an appropriate notice that complies with the requirements of LBR 9004-1. LBR 3007-1(d).
- C **ADVERSARY PROCEEDING:** An objection to a claim usually initiates a contested matter pursuant to FRBP 9014. If the objection to a claim contains a demand for relief of the kind specified in FRBP 7001, it becomes an adversary proceeding and should be filed as a complaint. FRBP 3007.

Motions to Allow Late Filed Claim or Motions to Allow Post Petition Debt

When filing a motion to allow late filed claim or motion to allow post petition debt, prepare and file with the motion the following:

- (1) A Proof of Claim on behalf of each creditor;

- (2) A proposed order;
- (3) If the motion is filed by a creditor and the debtor consents to the allowance of the claim, obtain the consent of the debtor's attorney **and** the trustee;
- (4) Appropriate certificate of service.

The trustee in Chapter 12 and 13 cases will determine if the claim(s) can be paid through the debtor's plan. If so, the court will ordinarily enter the order without the necessity of a hearing if all parties agree. If the matter cannot be handled in accordance with these procedures, a hearing will be scheduled.

Reconsideration of Claims

A party in interest is allowed to move for reconsideration of an order allowing or disallowing a claim. FRBP 3008.

HOW ISSUES MAY BE RAISED IN BANKRUPTCY COURT

The term "case" in Bankruptcy Court has a much broader meaning than in the District Court or Appeals Court. It is an umbrella term which encompasses all that happens with respect to a debtor's estate after the initial petition is filed. Issues are raised in a bankruptcy case by the filing of adversary proceedings/complaints, motions or applications.

ADVERSARY PROCEEDINGS

Certain categories of relief may be granted in a Bankruptcy Court only through an adversary proceeding. In general, FRBP 7001 requires that an adversary proceeding be commenced when seeking one of ten specified types of relief:

- (1) To recover money or property,
- (2) To determine the validity, priority, or extent of a lien or other interest in property,
- (3) To obtain approval pursuant to §363(h) for the sale of both the interest of the estate and of a co-owner in property,
- (4) To object to or revoke a discharge,
- (5) To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan,
- (6) To determine the dischargeability of a debt,
- (7) To obtain an injunction or other equitable relief,
- (8) To subordinate any allowed claim or interest, except when subordination is provided in a Chapter 9, 11 or 13 Plan,
- (9) To obtain a declaratory judgment relating to any of the foregoing, or
- (10) To determine a claim or cause of action removed pursuant to 28 U.S.C. §1452.

In addition to the ten actions listed in FRBP 7001, when a demand for relief specified in this rule, is joined with an objection to a claim, the objection becomes an adversary proceeding. FRBP 3007.

Filing a Complaint

The first step in commencing an adversary proceeding is the filing of a complaint. FRBP 7003. The complaint must be filed with the clerk in the district in which the bankruptcy case is pending, unless the venue provisions of 28 U.S.C. § 1409 authorize the filing of the complaint in another district. FRBP 5005(a).

Form and Caption of Complaint

The general format for a complaint is governed by FRBP 7010 and Rule 10 of the F.R.Civ.P. The caption of an adversary proceeding must conform substantially to Form No. 16D. FRBP 7010.

In re:

_____, Debtor

Bankruptcy Case No. _____

_____, Plaintiff

Chapter _____

V.

_____, Defendant

Adversary Proceeding No. _____

Contents of Complaint

As each complaint is unique, there is no prescribed form for the body of the complaint. However, Rule 10 of the F.R.Civ.P. sets forth general requirements for all pleadings which should be followed in complaints:

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

Rule 8 of the F.R.Civ.P. applies to adversary proceedings through FRBP 7008. They set forth general requirements as to the content of the complaint including:

- (1) a jurisdictional statement, which shall contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the code is pending;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief;
- (3) a demand for judgment for relief the pleader seeks; and
- (4) a statement regarding whether the proceeding is core or non-core and, if non-core, whether the pleader does or does not consent to the entry of final orders or judgments by the Bankruptcy Judge.

28 U.S.C. § 157 distinguishes between “core” and “non-core” proceedings. Parties to an adversary proceeding are required to designate in their initial pleadings whether a proceeding is core or non-core. This designation is important to the judges and the Clerk’s Office in determining how to process and handle final orders and rulings of the court.

See Rule 8 of the F.R.Civ.P. in reference to rules of pleading defenses, affirmative defenses, and effect of failure to deny.

Adversary Cover Sheet

An adversary proceeding must be accompanied by an Adversary Proceeding Cover Sheet, Form B-104. This form, issued by the Administrative Office pursuant to FRBP 9009, is designed to assist the clerk in completing the adversary proceeding opening report form. Forms may be obtained from the Clerk's Office.

Numbers Assigned to Adversary Proceedings

A separate file folder is prepared for every adversary proceeding and an adversary proceeding number assigned to each. The numbering system for adversary proceedings follows the same pattern as case numbers. Also, the initials of the judge assigned to the case are shown as a part of the number, i.e. 97-5045 JDW.

It is very important that the case number, the chapter number, and the adversary proceeding number be placed on all adversary pleadings filed.

Amendments to Complaints

A complaint may be amended once as a matter of course at any time before a responsive pleading is served, but any other amendments may be made only upon leave of court or by written consent of the adverse party. FRBP 7015; F.R.Civ.P. 15(a).

Filing Fee for Complaints

The fee for filing an adversary proceeding is \$150. 28 U.S.C. §1914(a). Checks or money orders must be payable to **Clerk, U. S. Bankruptcy Court.**

There are some exceptions to the fee requirement. If the United States, other than a United States Trustee acting as a trustee, or a debtor, is the plaintiff, no fee is required. In a Chapter 11 or 12, the Debtor-In-Possession must pay the fee if the granting of the complaint will benefit the estate of the Debtor-In-Possession. The fee is not required if the granting of the complaint will benefit only the Debtor-In-Possession (child support, alimony, etc.). If a trustee is the plaintiff, the fee is only payable from the estate to the extent there is any estate realized.

Time Limits for Filing Complaints

Complaints may be filed at any time during the pendency of the case, except complaints objecting to discharge under 11 U.S.C. §727, and certain complaints to determine dischargeability of debts under 11 U.S.C. §523(c). See FRBP 4007(b),(c) and (d). In a Chapter 7 liquidation case, a complaint objecting to the debtor's discharge under §727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors. FRBP 4004(a). In a Chapter 11 reorganization case, such a complaint shall be filed not later than the first date set for the hearing on confirmation. FRBP 4004(a). A complaint to determine the dischargeability of any debt pursuant to §523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a). These time limits are stated in the notice of the 341 Meeting of Creditors.

On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed. The motion shall be made before such time has expired. FRBP 4004(b) and 4007(c).

Issuance of Summons and Notice of Pre-Trial

Upon the filing of a complaint, the clerk shall issue a summons. Rule 16 of the F.R.Civ.P., made applicable to adversary proceedings by FRBP 7016, sets forth procedures for scheduling and planning the course of events in an adversary proceeding. In most adversary proceedings the conference pursuant to Rule 16 is assigned upon issuance of the summons. The clerk will issue all summons to the plaintiff's attorney to be served along with a copy of the complaint.

Service of Summons and Complaint

A summons is only valid for 10 days following its issuance. FRBP 7004(f). It is the responsibility of the plaintiff or the plaintiff's attorney to serve promptly the original summons and a copy of the complaint on the defendant(s). FRBP 7004(a); F.R.Civ.P. 4(a). The original issued summons and complaint must be served within 10 days of the issuance of the summons, and, if service is not effected within that time period, a new summons must be issued and served. FRBP 7004(f). The summons and complaint may be served anywhere in the United States. FRBP 7004(d). *Bankruptcy Reform Act of 1994, amended FRBP 7004 to provide that service on an insured depository institution in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless:*

- (1) *The institution has appeared by its attorney, in which case the attorney shall be served by first-class mail;*
- (2) *the court orders otherwise;*
- (3) *the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.*

The original summons and complaint may be served in a variety of ways as set forth in FRBP 7004 and Rule 4 of the F.R.Civ.P., including first class mail service, personal service, and publication. If service is effected by the plaintiff by any authorized form of mail, service is complete upon mailing, not delivery by the Postal Service. FRBP 7004(f) and 9006(e).

NOTE: FRBP 7004 (9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, to the attorney at the attorney's post-office address.

Proof of Service

When service is completed, the plaintiff's attorney shall file a certificate of service with the clerk.

Responsive Pleadings

There are no official forms for responsive pleadings. As with all pleadings in an adversary proceeding the caption must conform to Form 16C. FRBP 7010. FRBP 7008 and 7012 and Rules 8 and 12 of the F.R.Civ.P. provide detailed guidance as to the presentation of defensive pleadings. One requirement is that the responsive pleading must admit or deny any allegation that the proceeding is core or non-core, and, if the response is that the proceeding is non-core, the pleading must include a statement that the party does or does not consent to entry of final orders or judgments by the Bankruptcy Judge. FRBP 7012(b).

If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except where a different time is specified by the court. The United States or an officer or agency thereof shall serve an answer within 35 days after issuance of the summons. Also, see FRBP 7012(a) for times fixed for filing responses to cross-claims, counterclaims, etc.

Service and Filing of Pleadings

Rule 5 of the F.R.Civ.P. made applicable to adversary proceedings by FRBP 7005, governs the service and filing of every pleading subsequent to the original complaint. The general rule is that every pleading and every paper filed in a case must be served upon each of the parties unless the court orders otherwise.

If a party is represented by an attorney, service must be made upon the attorney unless the court orders service upon the party. Service may be by mail or by delivery of a copy as defined in Rule 5(b) of F.R.Civ.P.

NOTE: FRBP 7004(9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, to the attorney at the attorney's post office address.

All papers which must be served on parties shall be filed with the court either before service or "within a reasonable time thereafter." F.R.Civ.P.5(d). All pleadings shall be filed with the clerk. Sending an extra copy to the judge is **NOT** required.

Discovery

LBR 7005-2 Discovery conducted in adversary proceedings shall be filed unless the presiding judge gives permission for it to be retained by counsel.

Jury Trial (LBR 9015-1)

AUTHORITY FOR BANKRUPTCY JUDGES TO CONDUCT JURY TRIALS: Section 157 of Title 28 provides that if the right to a jury trial applies in an adversary proceeding before the United States Bankruptcy Court, it may be heard by a Bankruptcy Judge if specifically designated to do so by the District Court and if all the parties expressly consent to the jury trial being conducted by the Bankruptcy Judge. The United States District Court for the Middle District of Georgia, by order entered November 18, 1994, designated each of the Bankruptcy Judges of this court to conduct jury trials.

APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE: Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and adversary proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with FRBP 5005.

CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE: If the right to a jury trial applies and a timely demand has been filed under Rule 38(b) F.R.Civ.P., the parties may consent to have a jury trial conducted by a Bankruptcy Judge under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent no later than 30 days after the conclusion of the initial pretrial conference.

DEFAULT JUDGMENTS

Entry of Default

FRBP 7012(a) provides that the defendant to an adversary proceeding must serve an answer or motion within 30 days of the issuance of the summons by the court, unless the court prescribes a different time. If the United States or an officer or agency of the United States is a defendant, an answer must be served within 35 days of the issuance of the summons. FRBP 9006 provides that if the last day is a Saturday, Sunday or legal holiday, the deadline is extended to the next business day following the Saturday, Sunday or legal holiday.

If the defendant serves neither an answer nor one of the motions prescribed by FRBP 7012(b) within the time fixed by FRBP 7012(a), the defendant is deemed to be in default. FRBP 7055 incorporates by reference Rule 55 of the F.R.Civ.P. This Rule provides that when the defendant is in default, the plaintiff may seek to have the clerk enter the default on the court docket.

The clerk is permitted to enter a default only upon being presented with an affidavit setting forth the requisite facts. In addition, for adversary proceedings filed in the Columbus division, a Request For Default Judgment and proposed order is also required to be filed with the above affidavit. The facts to be included within the affidavit should normally include:

- a) Date of issuance of summons;
- b) Statement of whether the court fixed a deadline for the filing of an answer or motion, or whether the 30 or 35 day time limit applies;
- c) Date of service of the summons and complaint;
- d) Date of filing of an affidavit of service;
- e) Statement that no answer or motion has been received within the time limit fixed by the court or by FRBP Rule 7012(a);
- f) Statement that the defendant is not in the military service, as required by 50 U.S.C. Appendix §520. If the defendant is, or may be, in the military service, the defendant is afforded certain protections which must be addressed prior to the entry of default.
- g) Statement that defendant is not an infant or incompetent person.

If appropriate showing is made by the plaintiff that a default has in fact occurred, entry of default can be entered.

Judgment by Default

Once a default has been entered, the plaintiff may seek a default judgment. Rule 55(b) of the F.R.Civ.P. provide two methods for obtaining a judgment by default:

- (a) If the complaint seeks a sum certain, the defendant is neither an infant nor an incompetent person, and the defendant has not served an answer or motion, the clerk may enter a judgment for that amount upon receipt of an affidavit from the plaintiff setting forth the amount due. By sum certain, the rule means an amount that can be fixed by simple calculation or that can be set by documentation, such as an invoice. Merely because a party claims a specific amount, such as \$3 million for pain and suffering, does not make that an amount certain.

- (b) In all other instances, including a defendant who served an answer or motion and then fails to appear at a court hearing, default judgment must be entered by the court. If request is made for attorneys fees, the judgment must be entered by the court.

See: Rule 55(b) of the F.R.Civ.P. for more complete details. In the U.S. Bankruptcy Court for the Middle District of Georgia, the default judgment in ALL instances is entered by the court.

Setting Aside the Judgment by Default

Rule 55(c) of the F.R.Civ.P. states that ". . . if a judgment by default has been entered [the court] may . . . set it aside in accordance with Rule 60(b) of the F.R.Civ.P.." Rule 60(b) authorized a court to set aside a judgment on account of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, etc. A motion to set aside the default on these grounds must be made within a reasonable time, but not more than one year after the default judgment was entered and shall substantially conform to LBR 9013-1 and be accompanied by a notice of hearing and certificate of service.

Motions for Summary Judgment

- C **STATEMENT OF UNCONTESTED FACTS:** Upon filing any motion for summary judgment pursuant to FRBP 7056, the movant shall file a separate, short, and concise statement of the uncontested facts as to which the movant contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support such contention. LBR 7056-1(a).
- C **RESPONSE TO STATEMENT OF UNCONTESTED FACTS:** The party or parties opposing a motion for summary judgment shall file a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits that support such contentions. Any such response shall be filed and served within 20 days of service of movant's Statement of Uncontested Facts. LBR 7056-1(b).
- C **FACTS DEEMED ADMITTED:** All material facts set forth in the statement served by the moving party may be deemed admitted unless controverted by the statement required to be served by the opposing party or parties. LBR 7056-1(c).
- C **FAILURE TO COMPLY:** Failure to comply with this rule by the moving party may result in denial of the motion. LBR 7056-1(d).

MOTIONS

In many instances in bankruptcy cases, relief shall be requested by the filing of a motion. A motion, which is a request made to the court for an order or ruling, is usually written, but also may be made orally at a hearing. Written motions must be used to initiate "contested matters". FRBP 9013 and 9014. Motions also must be used in requesting an order from the court when no other form is specified under the Code or Rules. FRBP 9013. Motions filed pursuant to FRBP 9013 may be uncontested.

Contents of Motions/Multiple Requests For Relief

The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. FRBP 9013. Also, LBR 9004-1 states that motions for relief from stay may not be combined with other forms of relief, except those allowed by §362 and §1205 of the Code. Any waiver of the 30-day requirement of §362(e) of the Code by the movant shall be set out in the title of the motion. Objections to confirmation of a Chapter 13 plan may not be combined with other requests for relief. Additionally, LBR 9013-1 requires that any motion tendered to the clerk for filing shall be accompanied by a proposed order bearing a title that describes relief granted. If the motion requests alternative relief as allowed under LBR 9004-1(a), the order must dispose of all matters raised in the motion. All motions should indicate applicable code sections or FRBP that affect the granting or denial of the relief that is sought. All motions filed pursuant to this Rule shall be accompanied by a notice that substantially complies with the requirements of LBR 9004-1(b).

Service of Motions

Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor-in-possession and on those entities specified by the rules or, if service is not required or the entities to be served are not specified by the rules, the moving party shall serve the entities the court directs. FRBP 9013. Also, keep in mind that in most instances it is necessary to serve the United States Trustee with a copy of motions.

NOTE: FRBP 7004 (9) requires that the debtor be served at the address shown in the petition or Statement of Affairs or to such other address as the debtor may designate in a filed writing and, if debtor is represented by an attorney, to the attorney at the attorney's post-office address.

Form of Notices (LBR 9004-1)

All notices served shall substantially conform to the following directives:

- C **METHOD OF SERVICE:** Every notice shall be set out as a separate document from any associated pleading except that a certificate of service may be combined with the notice. The notice may be served separately. If served with associated pleading, the notice shall be the first page or pages of the service packet. However, the notice may be combined with a short pleading if both can be contained on a single page. LBR 9004-1(b)(1).
- C **DESIGNATED AUTHORITY FOR A NOTICE:** The notice shall contain language that identifies the authority of the sender for originating the notice by indicating whether the notice is being sent by direction of the court or pursuant to a Local Bankruptcy Rule, Federal Rule of Bankruptcy Procedure, or the Bankruptcy Code. The appropriate citation for any rule or code section shall be specified in the notice. LBR 9004-1(b)(2).
- C **IDENTITY OF SENDER AND COURT:** The notice shall clearly identify the sender by name, address, and telephone number. The notice shall also set out the name, mailing address, and phone number for the Clerk's Office. LBR 9004-1(b)(3).
- C **REQUIRED NOTICE CAPTION:** Each notice shall be captioned as it appears on any associated pleading or petition and shall substantially comply with the requirements of FRBP 9004(b). LBR 9004-1(b)(4).

C MANDATORY LANGUAGE:

Notice of Motion or Objection Other Than Objections to Claims. Unless a hearing is specifically required for the matter being noticed, notice and an opportunity for hearing as contemplated by LBR 9007-1 may be accomplished by the inclusion of the following language presented conspicuously in the notice and fully capitalized: **(PLEASE SEE LBR 9004-1(b)(5)(a) FOR MANDATORY LANGUAGE REQUIRED).**

Notice of Objections to Claims. The following language shall be presented conspicuously in the notice of objection to claims and fully capitalized: **(PLEASE SEE LBR 9004-1(b)(5)(b) FOR MANDATORY LANGUAGE REQUIRED).**

C NOTICE OF HEARING: If a hearing is to be held concerning any matter, the notice shall set out the location, hearing date, and time the hearing is scheduled to commence. LBR 9004-1(b)(6).

C NOTICE PERIOD: The party preparing the notice shall insert the appropriate deadline for response that is applicable to the motion filed. Unless a rule specifies otherwise, the time allowed shall be 20 days from the date of the issuance of the notice. LBR 9004-1(b)(7).

Motions For Relief from Stay

C GENERALLY/FEEES: A motion for relief from the automatic stay provided by §362 (a) of the Code must be made in accordance with FRBP 9014. FRBP 4001 (a)(1). A motion to terminate, annul, modify, or condition the automatic stay provided under §362(a) must be accompanied by a filing fee of \$75.00. The fee need not be paid if a motion is filed for approval of an agreement or stipulation to the termination, annulment, modification, or conditioning of the automatic stay, or when seeking relief from stay of actions against co-debtors under §1201 and §1301. Also, motions filed by a child support creditor or representative of such creditor who files a form that contains language detailing the child support, its status, and other characteristics as prescribed in §304(g) of the Bankruptcy Reform Act 1994 are exempt from payment of the filing fee.

C TIME REQUIREMENTS/WAIVERS: There are stringent time requirements related to a motion for relief from stay. The stay of any act against property of the estate under §362(a) expires as to the party making the request 30 days after a motion for relief is made unless the court before that time, after notice and hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination. 11 U.S.C. §362(e). If the hearing held within the 30-day period is a preliminary hearing, then the final hearing, must be concluded not later than 30 days after the conclusion of the preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances. 11 U.S.C. §362(e). When the court determines that the stay should be continued pending conclusion of a final hearing, it can only do so if “there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing.” 11 U.S.C. §362(e). Motions for relief from stay are given special consideration in scheduling and calendaring so that the deadlines imposed by the Code and Rules are met. Hearings are assigned by the Clerk’s Office within 30 days, if possible. Although not required, this court routinely requests that all motions for relief from stay be accompanied by a waiver of right to hearing within 30 days. LBR 9004-1(b). This waiver is requested because the court calendars do not permit consistent setting of hearings on relief from stay motions within the required 30 days.

C CONTENTS OF MOTIONS FOR RELIEF FROM STAY: Motions seeking relief from the automatic stay as to property of the estate must specify the relief requested and include the following: LBR 4001-1(a).

1. A description of the security interest(s) claimed by the creditor in the subject property (“collateral”).
2. The creditor’s estimate of value of the collateral and the basis of that valuation.
3. A statement of the indebtedness claimed to be due and owing with an itemization showing principal and advances, accrued interest, attorney’s fees, and costs.
4. A statement of the amount of any other secured claims against the property (if known), and whether any such claim is superior or inferior to the movant’s claim.
5. If relief is sought pursuant to §362(d)(1) of the Code for cause, including lack of adequate protection, a factual statement of the grounds for such relief.
6. Motions seeking relief under §362(d) of the Code, shall comply with the requirements of LBR 9004-1(a)1.

C AGREEMENTS PROVIDING FOR RELIEF FROM THE AUTOMATIC STAY OR FOR THE PROVISION OF ADEQUATE PROTECTION: All motions for approval of an agreement to provide adequate protection, for the modification or termination of the stay provided in §362 of the Code, for the use of cash collateral, or for the approval of an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity’s lien or interest in such property shall be served on or consented to by the following entities:

1. In a Chapter 11 or a Chapter 9 case, any committee appointed under the United States Bankruptcy Code or the authorized agent for the committee, or, if no committee has been appointed, the 20 largest unsecured creditors contained in the list filed pursuant to FRBP 1007(d), the trustee, any individuals or entities requesting notices pursuant to FRBP 2002(I), and any other individuals or entities that the court may direct. LBR 4001-1(b)(1).
2. In a Chapter 7, 12 and 13 case, all agreements, as set out above, must be consented to by the trustee appointed in the case, unless the trustee has expressly abandoned the asset or indicated in writing that the trustee has no opposition to the motion. No further service on any other entity shall be required unless otherwise ordered by the court. LBR 4001-1(b)(2).

C PAYMENT OF SECURED CLAIMS AFTER MOTION FOR RELIEF IS GRANTED OR COLLATERAL SURRENDERED: In a Chapter 13 case, after a motion for relief from stay has been granted, or after confirmation of a plan or a modified plan that provides for surrender of secured collateral, the Chapter 13 trustee is authorized, following written notice to any such creditor, to suspend payments on any claim filed by such creditor. Actual possession of the collateral by the creditor is not a prerequisite for the application of this rule. The creditor may reinstate its right to receive payment on the claim by notifying the Chapter 13 trustee in writing, with a copy to the court, that it believes it is entitled to payment under the plan, and the creditor furnishes an accounting of all proceeds, if any, received from the sale of the collateral. LBR 4001-1(c).

Special Procedures for Ex Parte Relief

LBR 4001-1-(d) provides special instructions concerning motions for ex parte relief as follows:

- A. **Generally.** Except in Chapter 11 cases, if collateral securing a claim, including property which is the subject of a lease, is a motor vehicle, trailer, boat or an airplane, and if there is a contractual obligation by the debtor to provide collision and comprehensive insurance and the same is not in effect, then the creditor may file with the Bankruptcy Court a motion for ex parte relief from the stay pursuant to §362 (f) of the Code to obtain possession of the collateral or leased property.
- B. **Chapter 11 Cases.** The Bankruptcy Court may, in its discretion, apply this rule to a Chapter 11 case.
- C. **Content of Motion.** Any motion for ex parte relief from the stay under this rule shall be verified and shall:
 - < Include a description of the collateral or leased property; a statement of the amount of the claim and the basis on which the claim is secured; an affidavit setting forth the basis on which the moving party believes that the collateral or leased property is not insured with full comprehensive insurance; a statement that the moving party or its attorney has given or attempted to give oral notice to the debtor's attorney or the debtor, if the debtor is not represented, and to the case trustee, that the motion is being filed; and a statement specifying the failure, if any, of the debtor to produce proof of insurance at the time of the meeting of creditors pursuant to §341 of the Code as required by LBR 4070-1.
 - < Be accompanied by a proposed order that shall provide that:
 - C The debtor or trustee is prohibited from using the collateral or leased property unless and until adequate evidence of full collision and comprehensive insurance is presented to the movant or movant's counsel;
 - C The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the movant or movant's counsel of the location of the collateral;
 - C The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the movant within 72 hours, unless within that time the movant or movant's counsel is provided with adequate evidence of collision and comprehensive insurance, or the debtor or trustee requests a hearing concerning same;
 - C The movant is authorized to take physical possession of collateral or leased property required to be surrendered under this rule, and to hold same, at movant's risk, provided that the movant may not dispose of the collateral or leased property unless and until the automatic stay is modified, terminated or expires as a matter of law and provided that, if the debtor provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the movant must return the property to the debtor;
 - C The movant or movant's counsel shall serve copies of the motion and order promptly on the debtor, the debtor's attorney, and the trustee, and shall provide telephonic notice to the debtor's attorney and, if the trustee is in actual physical possession of the property, to the trustee.

Lien Avoidance Motions

A proceeding by the debtor to avoid a lien or other transfer of property exempt under §522(f) of the Bankruptcy Code should be by motion pursuant to FRBP 9014. FRBP 4003(d). The motion to avoid lien is one of the most common motions filed by a debtor.

In a Chapter 7, 11, or 12 case, in order to avoid a lien pursuant to 11 U.S.C. §522(f), the debtor shall submit the motion and certificate of service with a proposed Order. LBR 9013-1.

Motions to avoid liens under §522(f) of the Code shall be served with a notice to respond that complies with the requirements of LBR 9004-1. The motion shall be served pursuant to LBR 9007-1. LBR 4003-2.

If no objection to the granting of the relief sought is filed and served within 20 days from the date of the notice and motion (as evidenced by certificate of service), the proposed order may be entered without further action. If an objection is served and filed within 20 days after the date of service in a Chapter 7, 11, or 12 case, it will be scheduled for a hearing. The objecting party shall obtain a hearing date from the Clerk's Office (or the objecting party will be contacted with the hearing date) and service of the hearing date shall be made pursuant to LBR 9007-1 and LBR 9004-1. If the objecting party is pro se, the clerk will issue and serve notice of the hearing date to consider the objection and response. LBR 3007-1(c).

APPLICATIONS

There are a number of proceedings under the Code that involve no obvious adverse parties and that require only judicial consideration and determination by the application of the relevant Code, Section or Rule. They generally are initiated by application or notice, rather than by complaint, as in adversary proceedings, or motions, as in contested matters. Applications may only be used when the Code or Rules so specify. The Rules provide that the following requests be made by application:

- (1) Application for permission to pay filing fees in installments. FRBP 1006(b)(1).
- (2) Application for appointment of creditors' committee organized before the order for relief. FRBP 2007(a).
- (3) Application for employment of professional persons. FRBP 2014(a) & LBR 2014-1.
- (4) Application for compensation for services rendered and reimbursement of expenses. FRBP 2016(a) and LBR 2016-1.
- (5) Application to shorten period of notice. FRBP 9006(d).

Notice and Hearing Requirement

Of all the proceedings initiated by an application, the only matter for which the Code and Rules expressly require notice and an opportunity for hearing is the application for compensation for services rendered and reimbursement of expenses. 11 U.S.C. §330(a). Notice must be provided by mail, at least 20 days prior to the hearing, to the debtor, the trustee, all creditors and indenture trustees for all applications for compensation or reimbursement of expenses totaling in excess of \$1000. FRBP 2002(a)(6).

LBR 2016-1 states that upon dismissal or conversion of a Chapter 13 case before confirmation of the debtor's plan, and prior to the trustee refunding any funds on hand to the debtor, the trustee shall disburse the funds on hand in the following priority:

1. The trustee shall pay any outstanding filing fee owed to the court.
2. The trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court.

3. The trustee is authorized to pay from the remaining funds on hand an attorney fee of \$400, less any fee paid as disclosed in the FRBP 2016 disclosure, to the attorney for the debtor, without any further motion, application, or order of this court.

If the trustee has cause to believe the amount of \$400 is inappropriate, the trustee shall file a request with the court to reduce the amount to be paid pursuant to this Rule.

If the attorney for the debtor requests a fee in excess of \$400, the attorney shall file an attorney fee application.

Some matters are determined ex parte without notice to the opposing parties. Generally applications to pay filing fees in installments and motions to shorten the period for a notice of motions are handled ex parte. The notice which is to be given for other proceedings initiated by application may be determined by the court pursuant to FRBP 2002(m).

Objections

In the event there is an objection to a proceeding initiated by application, an actual dispute would be created and the procedures under FRBP 9014 would apply.

APPEALS

Manner of Taking Appeal

An appeal from a final judgment, order, or decree of a Bankruptcy Judge to the District Court shall be taken by filing a notice of appeal with the clerk within the time allowed by FRBP 8002. FRBP 8001(a). The notice of appeal shall:

- 1) Conform substantially to the appropriate official form;
- 2) Contain the names of all parties to the judgment, order or decree appealed from and the names, addresses and telephone numbers of their respective attorneys;
- 3) Be accompanied by a filing fee of \$105. This amount includes a \$5.00 fee for filing the notice of appeal and a \$100 fee for docketing a proceeding on appeal;
- 4) Be accompanied by a sufficient number of copies to enable the clerk to serve the notice of appeal as required by FRBP 8004.

Time for Filing Notice of Appeal

The notice of appeal shall be filed with the clerk within 10 days of the date (see FRBP 9006 for computation of time) of the entry (date entered on docket by the clerk) of the judgment, order, or decree appealed from. FRBP 8002(a). The Bankruptcy Judge may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed if the requirements set forth in FRBP 8002(c) are met.

Expedited Appeal

There may be a need for expedited decisions in some appeals from the Bankruptcy Court to the District Court. Any party requesting expedited treatment of an appeal under these Rules shall file with the Clerk of the Bankruptcy Court a request for expedited treatment that substantially conforms with the **CLERK'S INSTRUCTIONS**. LBR 8007-2(b).

Designation of Record and Statement of Issues

Within 10 days after filing the notice of appeal, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 10 days after the service of the statement of the appellant, the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal. FRBP 8006.

Parties designating items as part of the record on appeal **shall provide copies of the items to the clerk**. If party fails to provide the required copies, the clerk shall prepare copies at the party's expense. FRBP 8006. The clerk transmits a copy of the record on appeal and will retain the original papers. FRBP 8007(b).

It is not sufficient to designate the record as "the entire file" or simply to say "omit nothing from the record." By order of the United States District Court, the record must contain an itemization of the documents to be included. You may request a copy of the docket sheet from the clerk to aid in designating the record on appeal.

Failure of the appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the District Court deems appropriate, which may include dismissal of the appeal. FRBP 8001(a).

Requesting Transcripts

If a party designates a transcript as part of the record, the party should immediately, after the filing of the designation, deliver to the court's Electronic Court Recording Operator a written request for the transcript (Form AO 435) and make satisfactory arrangements for payment of its cost. If the transcript cannot be completed within 30 days of receipt of the request, the recorder should seek an extension of time from the clerk and the action of the clerk should be entered in the docket and parties notified in accordance with FRBP 8006.

NOTE: Please see section entitled "**Transcripts and Duplicate Tapes of Proceedings**" for procedures on transcript and tape ordering.

Duty of Clerk to Transmit Record

When the record is complete for purposes of appeal, the clerk shall transmit it forthwith to the Clerk of District Court. All parties will be notified when the record on appeal is transmitted to the District Court for docketing. FRBP 8007(b).

Upon the failure of an appellant to properly file a designation of record and issues on appeal as required by FRBP 8006, the clerk shall prepare a skeletal record consisting of the order being appealed, the notice of appeal, and any documents filed after the notice of appeal that relate to the appeal. LBR 8007-2(a).

Briefs

Pursuant to FRBP 8009, unless the District Court excuses the filing of briefs or specifies different time limits:

- 1) The appellant shall serve and file a brief with the District Court Clerk within 15 days after entry of the appeal on the District Court's docket.
- 2) The appellee shall serve and file a brief with the District Court Clerk within 15 days after service of the brief of appellant.
- 3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed the appellee may file and serve a reply brief to the response of the appellant to the issue presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the District Court.

Motions for Leave to Appeal

FRBP 8003 specifies procedures for appealing from an order of a Bankruptcy Judge that is interlocutory (an order that does not finally dispose of the action). The party seeking leave to appeal must file a motion for leave to appeal. Upon the filing of the motion, accompanied by certificate of service, the Clerk's Office will docket and monitor the motion, and after the response time of 10 days after service of the motion has expired, the motion for leave to appeal and any response will be transmitted to the District Court Clerk for disposition. Only the \$5.00 appeal fee is due at the time of filing. The fee of \$100 for docketing the appeal is not due unless and until the motion for leave to appeal is granted.

Motions for Stay Pending Appeal

FRBP 8005 addresses how to proceed with a motion for stay pending appeal. A motion for a stay of the judgment, order or decree of the Bankruptcy Court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the Bankruptcy Court. The Bankruptcy Court may suspend or order the continuation of other proceedings in the case or make any other appropriate order during the pendency of the appeal on such terms as will protect the rights of all parties in interest. A motion for stay may be made in the District Court and not the Bankruptcy Court, but the motion must show why relief was not obtained from the Bankruptcy Court.

Dismissal of an Appeal

Procedures for dismissal of an appeal are set forth in FRBP 8001(c), and there are two categories:

- Ⓒ **Before** docketing, and
- Ⓒ **After** docketing.
- Ⓒ If an appeal has **not** been docketed in the District Court, the Bankruptcy Judge may dismiss the appeal upon the filing of a stipulation for dismissal signed by all the parties or on motion and notice by the appellant.
- Ⓒ If an appeal has been docketed, the Clerk of the District Court is required to enter an order dismissing the appeal if the parties to the appeal sign and file with the Clerk's Office an agreement that the appeal be dismissed and pay court costs and fees that may be due.

Voluntary dismissal and docketing may also be accomplished by a motion of appellant on terms and conditions fixed by the District Court.

REMOVAL AND REMAND

Removal in bankruptcy is the transfer of claims or causes of action in civil actions pending in a state court or another federal court in a state in which the civil action is pending. 28 U.S.C. §1452. Only proceedings before the United States Tax Court or a civil action by a government unit to enforce that governmental unit's police or regulatory power may not be removed. 28 U.S.C. §1452(b).

Removal is Initiated by Filing a Notice of Removal

Unless removal actions are excluded from the District Court's standing order of referral to the Bankruptcy Court, the removal process begins by the filing of a notice of removal with the Bankruptcy Clerk. The filing should be done within the state or federal court's district and division in which the civil action is pending. FRBP 9027(a). If removal actions are excluded from the standing order of referral, all of the filing discussed in this section should be with the Clerk of the District Court.

NOTE: In the Middle District of Georgia, the order of referral does not exclude removals.

The notice of removal shall be signed pursuant to FRBP 9011, and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core, and if non-core, that the party filing the notice does or does not consent to entry of final orders or judgments by the Bankruptcy Judge, and be accompanied by a copy of all process and pleadings. FRBP 9027(a)(1).

Fee Required for Removal

Notice of removal shall be accompanied by the same fee as required for filing an adversary proceeding and an adversary cover sheet.

Time for Filing Notice of Removal

If the claim or cause of action in a civil case is pending when a case under the code is commenced, notice of removal may be filed only within the **LONGEST** of:

- (a) 90 days after the order for relief;
- (b) 30 days after entry of an order terminating a stay, if the claim or cause of action has been stayed under §362 of the Code; or
- (c) 30 days after a trustee qualifies in a chapter 11 reorganization case, but not later than 180 days after the order for relief. FRBP 9027(a)(2).

If a case under the code is pending when a claim or cause of action is asserted in another court, a notice of removal may be filed within the **SHORTER** of:

- (a) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed; or
- (b) 30 days after receipt of the summons if the initial pleading has been filed with the court, but not served with the summons. FRBP 9027(a)(3).

Notice of Removal

The party filing the notice of removal must serve a copy of the notice on all parties to the removed claim or cause of action promptly after the filing of the notice. FRBP 9027(b).

Filing of Copy of Notice with Court from Which Removal is being Effected

The party filing the notice of removal must also file a copy of the notice with the Clerk of Court from which the claim or cause of action is removed promptly after the filing of the notice. FRBP 9027(c).

When Removal Effected

Removal is effective upon the filing of the copy of the notice of removal with the Clerk of Court from which the claim or cause of action is removed. No formal act or order of the court is required. FRBP 9027(c).

Motions for Remand

Motions for remand of a removed claim or cause of action must be filed with the Bankruptcy Clerk and served on the parties to the removed claim or cause of action. FRBP 5005(a).

Unless a District Court Judge orders otherwise, a motion for remand should be determined by the Bankruptcy Judge. FRBP 9027(e).

REAFFIRMATION AGREEMENTS

A reaffirmation agreement is a debtor's agreement with a creditor to reaffirm the debtor's obligation to repay a debt that would otherwise be dischargeable. A common example of the type of debt involved in a reaffirmation agreement is the note on a debtor's automobile.

A reaffirmation agreement, to be enforceable, must be made before the granting of a discharge and filed with the court. 11 U.S.C. §524(c)(1)(3). The Bankruptcy Code requires that the agreement advise the debtor, clearly and conspicuously, that the agreement may be rescinded at any time prior to discharge or within 60 days after the filing of the agreement with the court, whichever is later, by giving notice of rescission to the creditor holding the claim. 11 U.S.C. §524(c)(2). *The Bankruptcy Reform Act of 1994 amended §524(c) of the Bankruptcy Code by adding new subsections which require the Reaffirmation Agreement to contain an explicit statement advising the debtor that the agreement is not required by either bankruptcy or non-bankruptcy law.*

If the debtor is represented by an attorney in negotiating the agreement, the agreement must be accompanied by an attorney's affidavit or declaration stating that:

- 1) The debtor was fully informed and voluntarily entered into the agreement; and
- 2) The agreement does not impose an undue hardship on the debtor or the debtor's dependents.
- 3) *The attorney fully advised the debtor of the legal effect and consequences of such an agreement, including a default under such an agreement. 11 U.S.C. §524(c)(3)(as amended 10/22/94).*

If the debtor is not represented by an attorney and a reaffirmation agreement is filed, the court will set a hearing to determine if the agreement should be approved in accordance with §524(c)(6) of the Code.

LBR 4008-1.

III. MISCELLANEOUS INFORMATION

Discharge of Debtor - When Granted

Discharges in Chapter 12 and Chapter 13 cases are granted when debtor completes payments under a confirmed plan. 11 U.S.C. §1228; 11 U.S.C. §1328.

In Chapter 7 cases, discharges are granted after the time for filing objections to discharge expires, provided there are no objections pending. 11 U.S.C. §727; FRBP 4004 (c)(1).

The order confirming plan operates as a discharge in Chapter 11 cases. 11 U.S.C. §1141.

Discharge Hearings

Discharge hearings are no longer required by the Bankruptcy Code or Rules except for court approval of reaffirmation agreements. *Section 524(d) of the Bankruptcy Code was amended by the Bankruptcy Reform Act of 1994 to require the court to hold a discharge hearing and to advise the debtor of the consequences and effects of such a reaffirmation agreement only if the debtor was not represented by an attorney during the negotiating of the agreement.* Therefore, discharge hearings will be scheduled only when necessary. If hearing is scheduled, the debtor must appear at the hearing and the court must inform the debtor that the agreement is not required by law and of the legal effect and consequences of the agreement. 11 U.S.C. §524(d)(1).

Exemptions/Lien Avoidance

The law permits a debtor to claim certain property as exempt to the exclusion of creditors. This is part of the “fresh start” approach.

The Bankruptcy Code of 1978 contains itemized exemptions that may be claimed by individual debtors. However, it also gave each state the right to opt out of Federal Exemptions and set up its own exemptions. Georgia passed such a law and the exemptions set up by the State of Georgia in Georgia Code §44-13-100 are the only exemptions available to Georgia residents. Debtors must claim and itemize their exemptions in Schedule C.

Pursuant to LBR 4003-1, Schedule C shall contain the following:

1. A detailed list of all property or assets claimed as exempt by the debtor.
2. Each asset's value shall be stated in dollar amounts. If the value of any asset claimed to be exempt is not known, the debtor shall state the exemptible sum in dollars.
3. Exemptions will be limited to the dollar amount claimed as exempt even if the asset exempted is later discovered to have had a greater value than the amount listed in the schedules.
4. If exempting future proceeds of an unliquidated claim or of a cause of action, the debtor shall fully describe any such claim or cause of action.

If Schedule C is amended, notice to all parties in interest in the case shall be sent by the debtor; objections to the amended schedule shall be filed within 30 days from the date of service of such notice. The notice required by this rule shall substantially comply with the requirements of LBR 9004-1 and LBR 9007-1. LBR 4003-1.

The trustee or any party in interest has the right to object to the exemptions claimed by the debtor within 30 days after the conclusion of the meeting of creditors, or the filing of an amendment to the list. Objections must be in writing with copy served on the trustee, the debtor and the debtor's attorney. FRBP 4003(b).

Exempt property is put beyond the reach of creditors in order to preserve and protect the debtor's fresh start. If a lien impairs a debtor's exemption, the debtor may cancel the lien if it is a judicial lien, usually on real estate, or a lien that is a "nonpossessory, nonpurchase money security interest" in household goods, books or tools of trade or health aids for the debtor or debtor's dependents. Automobiles and motor vehicles are generally excluded from lien avoidance.

To avoid a lien, the debtor should file a motion in accordance with FRBP 9014. FRBP 4003(d). Motions to avoid liens under §522(f) of the Code shall be served with a notice to respond that complies with requirements of LBR 9004-1. The motion shall be served pursuant to LBR 9007-1. LBR 4003-2.

Subpoenas to Witness in Bankruptcy Matters

Amendments to F.R.Civ.P. 45, which were effective December 1, 1991, and are applicable to bankruptcy cases pursuant to F.R.Civ.P. 9016, significantly changed subpoena procedures for all subpoenas, including those for depositions.

The subpoena forms are now used for all purposes. It is no longer necessary that subpoenas be issued by the clerk, although the clerk still has authority. A subpoena may be issued by attorneys as officers of the court.

Attorneys are authorized to issue subpoenas in the name of the court in which they are authorized to practice, and in the case of a deposition or a production of documents taking place in another district, in the name of the court where the deposition or production is to take place.

It is not required that the attorney be a member of the bar or admitted pro hac vice in the district in whose name the subpoena is issued, so long as the deposition or production pertains to a primary action in a court in which the attorney is authorized to practice.

The requirement that a subpoena be issued under seal is abolished. When a subpoena is issued, the only requirement is that it be signed.

Proof of service of the subpoena is required to be filed only when necessary. Presumably, this would happen only when a dispute arises.

The Clerk's Office will provide blank forms of subpoenas to all attorneys who request them. There are now three forms: Subpoena in an Adversary Proceeding, Subpoena in a Case under the Bankruptcy Code, and Subpoena for Rule 2004 Examination.

Adversary subpoenas and case subpoenas shall also be used for taking depositions, as appropriate.

Archived and Closed Files

The Clerk's Office has a limited amount of storage space for closed bankruptcy case files, adversary files, and bankruptcy docket sheets. The Clerk's Office strives to retain locally closed files for two years after closing; all other files are shipped to the Federal Records Center (FRC), 1557 St. Joseph Avenue, East Point, Georgia. If a closed file has been shipped to the FRC, it will be necessary for the party requesting the file to pay a \$35 archive retrieval fee before the file can be ordered from the FRC. All requests for closed files should be made in writing to the Clerk's Office. Please note that a file ordered from the FRC for viewing or copying will be returned to the FRC.

The FRC has entered into a courtesy agreement with the courts whereby it will accept mail requests and telephone requests for photocopies of personal bankruptcy case files only. Also, the FRC will provide counter service to the public for reviewing bankruptcy files in lieu of returning the file to the court. Please contact the court for information regarding the ordering of files from the FRC.

Reopening Cases (FRBP 5010)

Filing fees prescribed by 28 U.S.C. § 1930(a) must be collected when a Bankruptcy Code case is reopened, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge.

If a Bankruptcy Code case is reopened for any other purpose, the appropriate fee to be charged is the same as the filing fee in effect for commencing a new case on the date of reopening.

A motion to reopen the case shall substantially conform to LBR 9013-1 and be accompanied by a notice of hearing and certificate of service. The filing fee is due AT THE TIME THE MOTION TO REOPEN is filed.

Appointment of Trustee in reopened cases: FRBP 5010 provides: "A case may be reopened pursuant to §350(b) of the Code. In a Chapter 7, 12, or 13 case, a trustee shall not be appointed by the United States Trustee unless the court determines that a trustee is necessary" Motions to reopen cases should include a statement regarding the necessity for a trustee to be reappointed if the motion is granted.

The case number assigned to the bankruptcy case when it was filed is used when the case is reopened.

If the moving party anticipates filing a subsequent proceeding (complaint, etc.), the case must be reopened via entry of an order prior to the court entertaining other documents.

Usually a "Motion to Reopen" should be filed if the case has been CLOSED. A "Motion to Reinstate" should be filed if the case has only been DISMISSED and not statistically closed. There is a difference between dismissal of a case and closing. Please check PACER, VCIS or contact the court directly to determine whether the case is closed.

Court Reporting

All federal court proceedings must, by law, be recorded verbatim. Verbatim records of court proceedings are an important part of our legal system because, among other things, they provide a basis for rulings by higher courts in instances in which the outcome of a particular trial is appealed by either side. If a case is appealed, a transcript may be required from the record that was taken in court at the time of the trial. Bankruptcy Judges have the option of using contract reporters or electronic court recorder operators (ECROs).

There are a number of steps attorneys can take to facilitate record taking in the courtroom:

1. Give one of your business cards to the ECRO.
2. Give the ECRO a complete list of witnesses you will call during the proceeding.
3. When speaking on the record, make certain that you talk directly in front of a microphone.
4. At the beginning of the proceedings, identify yourself at a microphone and spell your name for the record.
5. Make certain that all witnesses you call also identify themselves clearly and spell their names.
6. Make certain that verbal responses are elicited from all witnesses, or that some audible indication be made by you through the microphone.
7. If any of your witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such names and terms for the ECRO.

Transcripts and Duplicate Tapes of Proceedings

Requests for copies of tapes and transcripts for cases heard by the court in Macon, Athens, Albany, Columbus, Thomasville and Valdosta shall be made to the deputy clerk designated below and must be made in writing by submitting form AO 435. The estimated cost of the transcript will be provided by the ECRO and must be paid in advance of its preparation. All requests for tape duplications of any matter heard by the court shall be made directly to the court ECRO or to the contact person named below and must be made in writing by submitting form AO 436. A fee of \$15.00 per tape duplicated must be paid to the Clerk of Court in advance. Transcript order form AO 435 and the tape order form AO 436 may be obtained at the Clerk's Office or from the court ECRO following a courtroom hearing. Requests for tapes or transcripts must be signed by the ordering party.

Requests for transcripts of hearings or copies of tapes in Albany (Chapter 11 and 12 cases), Columbus, Thomasville and Valdosta cases should be directed to:

Ron Henderson, Deputy-In-Charge
(706) 649-7837 Ext. 4424

Requests for transcripts of hearings or copies of tapes in Albany (Chapter 7 and 13 cases), Athens and Macon cases should be directed to:

Diana Clough, Supervisor
(478) 752-3506 Ext. 3357

Transcript Rates are:	<u>Original</u>	<u>1st copy</u>	<u>Additional Copies</u>
Ordinary	3.30 per page	.83 per page	.55 per page
Expedited	4.40 per page	.83 per page	.55 per page
Daily	5.50 per page	1.10 per page	.83 per page
Hourly	6.60 per page	1.10 per page	.83 per page
Realtime	2.75 per page	1.10 per page	

Prices are offered for general information only and subject to change.
 Please contact persons named above for actual estimate of charges to apply.

Transcripts at the ordinary rate can be delivered within 30 days, and expedited transcripts within 7 days, from payment of deposit.

Admission of Attorneys

- A. Any attorney who is admitted to the Bar of the United States District Court for the Middle District of Georgia is admitted to the Bar of the Bankruptcy Court.
- B. Any attorney who is not admitted shall be permitted to appear and participate in a bankruptcy case or proceeding only upon compliance with LBR 9010-1 which states:

Applications to appear pro hac vice shall be filed with the Clerk's Office in the division in which the case or adversary proceeding is pending. The application shall state under penalty of perjury the following information:

1. The attorney's name, law firm, office address, office telephone number, State Bar number, and name of client.
2. A list of the state and federal courts where the attorney has been previously admitted to practice and the date of each admission.
3. The court may require a certificate showing that the attorney is in good standing in the courts listed in paragraph 2 above.
4. The court may require the applicant to provide to the court the name, address, and bar number of an attorney who is admitted to practice in the Middle District of Georgia and who has agreed to serve as local counsel.
5. The applicant shall attach a proposed order to the application.
6. An attorney who has been admitted to practice pursuant to the provisions of this Rule shall promptly notify the court of any change in status of matters disclosed pursuant to this Rule.

Withdrawal of Counsel

Pursuant to LBR 2091-1, no attorney or law firm, having filed a petition or other pleading on behalf of a debtor or having made an appearance for a creditor in a contested matter or adversary proceeding, shall thereafter abandon the case or adversary proceeding in which the appearance was made, or withdraw as counsel for any party therein, except by order of court obtained after giving notice pursuant to LBR 9004-1 and 9007-1.

Courtroom Practice and Procedures

Attorneys practicing before the court are expected to appear before the court at all prescribed times, to be on time, to come prepared and to possess a working knowledge of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, Federal Rule of Evidence, and the Local Rules and General Orders of this court.

To avoid being interrupted by the court's electronic court recorder operator/contract reporter, it will be necessary for the attorney to state his/her full name for the record for each case where an appearance is necessary. Attorneys should address the court or examine witnesses at the podium or at the microphone at the counsel table.

All pleadings presented to the court must legibly reflect the attorney's name, mailing address, phone number and Georgia State Bar number, if the attorney is a member of the State Bar of Georgia. It would also be extremely helpful to the court if the pleadings were filed several days prior to the court hearing so that the pleadings could be processed for docketing, and most importantly reviewed by the judge prior to hearing. Filing pleadings in the courtroom at the hearing can cause undue delays and confusion, particularly on days where many chapter 13 cases are scheduled.

Attorneys who plan to introduce exhibits in court should bring extra copies for other counsel and any witnesses. The original introduced exhibit is for the judge to view during the hearing or trial.

Attorneys should advise their clients of the professional attire dress code which requires all persons entering the United States Courtrooms for the Middle District of Georgia as spectators or participants to be dressed in the following manner: Males shall wear long pants, dress shirts and shoes. Females shall wear dresses, long pants or skirts, blouses and shoes.

Continuances and Settlements

Requests for continuances and settlements must be made to the assigned judge's calendar or courtroom clerk as soon as possible and before making any written request. The request must be accompanied by representation by counsel that they have consulted with the other parties in interest, must identify specifically who has been consulted, and must state whether or not the other parties in interest consent to the continuance or settlement.

Even the representation that a continuance or settlement has been agreed to is not a guarantee that the court will approve the matter if, in the opinion of the court, the rights of other parties are affected or other cause exist.

Emergency or Expedited Hearings and Motions

In all cases in which a party files a pleading and seeks to expedite its consideration by the court, a separate motion for expedited hearing must be filed contemporaneously with the affected pleading, containing sufficient information on its face to permit the court to determine the necessity for expedited treatment. All motions to expedite shall be accompanied by a proposed order and a certification regarding request for emergency hearing. The certificate shall substantially comply with the form certificate found in the **CLERK'S INSTRUCTIONS**. LBR 2002-1(f).

Motions for emergency or expedited hearings must be filed pursuant to FRBP 9013. The motion must specify in the caption that an emergency or expedited hearing is sought and must include a statement as to the specific irreparable harm which will be caused if the motion is not granted, not just a statement that irreparable harm will occur.

Please specify in the motion for emergency hearing the time frame within which you are requesting the substantive motion be set. Upon filing of the motion for emergency hearing, the Clerk's Office will take steps immediately to bring the motion to the attention of the appropriate judge. It is not necessary, after filing such a motion, to call the Clerk's Office to see when the motion will be set for hearing. The Clerk's Office will expeditiously handle all properly identified motions for emergency hearing and will contact the movant after obtaining a determination on said motion from the judge. The movant, upon filing of the emergency motion, should be prepared to serve the notice of hearing on all applicable parties by mail, and in certain instances, by telephone or facsimile transmission, if the motion is granted. The certificate of mailing and/or the certificate of telephone/facsimile notice must be filed prior to the expedited hearing.

Requests for Leave of Absence by Attorneys

The following is pursuant to LBR 9011-1.

1. Attorneys practicing in the Bankruptcy Court for the Middle District of Georgia are expected to be available to personally represent the interests of their clients in matters before the court. Leaves of absence will not be granted by the court. If requested, the court will make reasonable efforts to accommodate an attorney's absence for personal or professional reasons provided compliance is shown.
2. All requests for leave accommodations will be by letter delivered to the Clerk of Court. The request shall specify the inclusive dates covered and shall include a list of all cases involving counsel in which a hearing, meeting of creditors pursuant to §341 of the Code, FRBP 2004 examination, or other discovery examination has been scheduled during the leave period and the name of the judge handling the matter. If the matter scheduled is contested, the name, address and telephone number of opposing counsel must also be disclosed. It is permissible to recruit substitute counsel to appear, provided substitute counsel is aware of the circumstances of the case and can adequately represent the client's interest in such hearing. If substitute counsel has been recruited, the request for leave shall note the name, address, and telephone number of substitute counsel for each matter.
3. In the event substitute counsel is not available, counsel shall file a motion for continuance in each scheduled hearing and attach a copy of the motion as an exhibit to the leave request. Unless all parties consent to the granting of the motion for continuance, a hearing on any such motion must be scheduled before the beginning of the leave period, with adequate notice of the hearing to the trustee and other parties in interest involved in the contested matter and to other such parties as directed by the court.
4. Subject to the provisions of paragraph 5 below, if a notice scheduling a hearing during a period in which the attorney is absent is issued, the court will make reasonable efforts to advise opposing counsel and/or the trustee and reschedule the hearing.
5. In the event an emergency or urgent matter requires that a hearing be conducted during the period of the attorney's absence, the court retains discretion to schedule a hearing despite the absence. Accordingly, all requests for leave accommodations must be accompanied by a designation of another member of the Bar of this court who has agreed to be available to respond to such an emergency.
6. Counsel must update the above disclosures immediately upon any change of circumstances that occurs after the date of counsel's request.

Attorney Bar Number

Each attorney shall include the attorney's State Bar number on all documents filed with the court. The State Bar number shall be placed on the document in immediate proximity to the attorney's signature. LBR 9011-1(b).

CHAPTER 11 MATTERS

Small Business Chapter 11 Reorganization Cases

- C **ELECTION:** Pursuant to 11 U.S.C. § 1121 in a chapter 11 case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the court, for cause, may fix. FRBP 3016, 3017 and LBR 3017-2(a).

- C **APPROVAL OF DISCLOSURE STATEMENT:**

Conditional Approval: If the debtor is a small business and has made a timely election to be considered a small business in a Chapter 11 reorganization case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with FRBP 3016. On or before conditional approval of the disclosure statement, the court shall:
LBR 3017-2(b)(1)

- A. fix a time within which the holders of claims and interests may accept or reject the plan;
- B. fix a time for filing objections to the disclosure statement;
- C. fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- D. fix a date for the hearing on confirmation.

Application of Bankruptcy Rule 3017: If the disclosure statement is conditionally approved, FRBP 3017(a), (b), (c), and (e) shall not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying FRBP 3017(d). LBR 3017-2(b)(2).

Objections and Hearing on Final Approval: Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with FRBP 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan. LBR 3017-2(b)(3).

Chapter 11 Plan and Disclosure Statement

- C Copy requirements - Original only
- C It is the responsibility of the filing party to serve the U. S. Trustee.
- C The disclosure statement shall be filed with the plan or within the time fixed by the court. Disclosure statements shall, to the extent applicable, be complete in one document including any attached exhibits and shall include all information pursuant to LBR 3016-2.

Objections to Confirmation of Chapter 11 Plan

- C Copy Requirements - Original only
- C Objections to the plan should not be filed until after the disclosure statement has been approved and balloting on the plan has begun. The order approving the disclosure statement sets the date for filing objections to the plan.
- C Should you wish to review the ballot file prior to the confirmation hearing, please contact the court.

Ballots - Voting on Plans

For all confirmation hearings the plan proponent must prepare a written ballot summary in substantially the same form as contained in the **CLERK'S INSTRUCTIONS**. In addition to indicating how each class and every entity voted, the summary shall also have each ballot attached as an exhibit. At the confirmation hearing, the original ballot summary and one copy will be submitted to the court. At that time it will be marked as an exhibit for the plan proponent. LBR 3018-1.

Chapter 11 Final Report/Decree

- A. Projected Dates for Completion of Substantial Consummation: Chapter 11 debtors shall file with the clerk within 15 days of the date of the entry of the order confirming the plan of reorganization, a report specifying the projected date for completion of substantial consummation as defined in §1101(2) of the Code. The report shall describe the action that is to be taken to complete substantial consummation. If the projected date for completion of substantial consummation must be extended, the debtor shall file a supplemental report specifying the new projected date, the progress made toward consummation of the plan, the action remaining to be taken to complete substantial consummation, and the reasons for the delay. LBR 3022-1(a).
- B. Application for Final Decree: Upon completion of substantial consummation as defined in §1101(2) of the Code, the debtor shall comply with the procedures contained in the **CLERK'S INSTRUCTIONS**, file a final report and final account in compliance with §704(9) of the Code, file an application for final decree, and submit a proposed final decree. LBR 3022-1(b).

CHAPTER 12 MATTERS

The Clerk's Office requires the original only of all documents filed subsequent to the petition for relief.

11 U.S.C. §1221 provides for the filing of a plan by the debtor within 90 days of the filing of the petition, and 11 U.S.C. §1224 provides that the confirmation hearing shall be concluded not later than 45 days from the filing of the plan.

The trustee shall file a final report upon discharge, dismissal or conversion of the case.

CHAPTER 13 MATTERS

The Clerk's Office requires the original only of all documents filed subsequent to the petition for relief.

The debtor may file a Chapter 13 Plan with the petition. If a plan is not filed with the petition, it shall be filed 15 days thereafter. FRBP 3015(b).

LBR 3015-1 requires the use of a standard Chapter 13 Plan and which shall substantially conform to the plan form contained in the **CLERK'S INSTRUCTIONS**.

A request to modify a plan pursuant to §1329 of the Code shall be served by the proponent of the modification on the trustee and on all parties in interest affected by the modification pursuant to LBR 9004-1 and LBR 9007-1.

All creditor objections to confirmation of a Chapter 13 Plan shall comply with LBR 3015-3.

Conversions

Code §§706, 112, 1208, 1307, FRBP 1017, 1019.

A fee of \$400 is due to convert a Chapter 7 or Chapter 13 case to Chapter 11 upon the debtor's motion.

Upon the filing of a motion or notice to convert a case to Chapter 7 of the Bankruptcy Code, the movant shall pay \$15.00 to the Clerk of Court for payment to trustees serving in cases as provided in 11 U.S.C. §330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion.

Notice: All conversions pursuant to §1208(a) or 1307(a) of the Code, shall be in the form of a notice of conversion, filed by the debtor with the Clerk of Court. The notice shall include a certification that all parties in interest have been served. The effective date of conversion shall be the date the notice of conversion is filed. LBR 1019-1(a).

Trustee Fee: If a Chapter 13 case is converted prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court. LBR 1019-1(b).

Conversion by Motion: Pursuant to §706(a) of the Code, a debtor may convert a Chapter 7 case to a case in Chapter 11, 12, or 13 by filing of a motion accompanied by an appropriate order. The debtor shall serve the motion and notice pursuant to LBR 9004-1 and LBR 9007-1. LBR 1019-1(c).

Duty of Trustee: Upon conversion of a case from Chapter 13 or Chapter 7 to any other chapter in title 11, the trustee shall file an account of all receipts and disbursements made in the case and a report on the administration of the case pursuant to §704(9) of the Code. The trustee is discharged from the case 30 days after the filing of the required reports. LBR 1019-1(d).

Pending Motions to Dismiss: All pending motions to dismiss filed by the trustee prior to the conversion of a case will be deemed terminated as moot. LBR 1019-1(e)

Duty to Amend: Upon conversion of a case, the debtor shall, within 15 days of the effective date of conversion, file inventories, schedules, and statements of financial affairs as may be applicable, or amend such items to include any interest in property acquired since the entry of the order for relief in the original chapter. The amendments shall account for any material additions, deletions, or other changes in the debtor's assets or liabilities. The amendments shall add to the mailing matrix any post-petition, pre-conversion creditors. If no amendments or additional inventories, schedules, or statements are necessary, the debtor shall file a certificate to that effect within the 15-day period. LBR 1019-1(f).

Dismissals (LBR 1017-2)

VOLUNTARY DISMISSAL OF A CHAPTER 7 CASE: A motion for voluntary dismissal of a Chapter 7 case must be served pursuant to LBR 9004-1 and LBR 9007-1. Prior to the voluntary dismissal of a Chapter 7 case, all administrative expenses must be paid. If the Chapter 7 trustee does not consent in writing to the dismissal, the court will schedule a hearing.

VOLUNTARY DISMISSAL OF A CHAPTER 12 OR CHAPTER 13 CASE PREVIOUSLY CONVERTED FROM CHAPTER 7: A motion by a debtor to dismiss a Chapter 12 or Chapter 13 case that was previously converted from Chapter 7 must specify the grounds for the motion. A motion for voluntary dismissal of a Chapter 13 case previously converted from a Chapter 7 case must be served pursuant to LBR 9004-1 and LBR 9007-1. If the Chapter 7 trustee originally appointed in the Chapter 7 case and the Chapter 13 trustee do not consent in writing to the dismissal, the court will schedule a hearing.

TRUSTEE FEE ALLOWABLE UPON DISMISSAL: If a Chapter 13 case is dismissed prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 trustee shall be allowed to retain up to \$100.00 as an administrative expense without further motion or order of the court.

VOLUNTARY DISMISSAL OF CHAPTER 11 CASE: A debtor's motion to dismiss a Chapter 11 case shall specify the grounds for the motion. The debtor shall obtain a hearing date for the motion and serve the motion for voluntary dismissal, along with a notice of hearing pursuant to LBR 9004-1.

MOTION BY CHAPTER 7 TRUSTEE TO DISMISS CASE FOR FAILURE TO ATTEND THE MEETING OF CREDITORS HELD PURSUANT TO §341 OF THE CODE: A motion to dismiss a Chapter 7 case by the Chapter 7 trustee for failure of the debtor to appear at the meeting of creditors pursuant to §341 of the Code shall be served on all entities required by FRBP 2002(a) and shall comply with LBR 9004-1 and LBR 9007-1.

EFFECT OF DISMISSAL ON RELATED ADVERSARY PROCEEDINGS: After dismissal of a bankruptcy case, any pending adversary proceedings will be dismissed by the court unless the court determines that it should retain jurisdiction.

Sale of Estate Property (LBR 6004-1)

NOTICES: Notices required by FRBP 6004 shall be prepared by the movant. A notice shall, in addition to the requirements of FRBP 2002(c)(1) and LBR 9004-1, contain the name and address of the proposed buyer, if known, and estimated cost of the sale or lease, including commissions, auctioneers' fees, cost of document preparation and recordation, and other such expenses.

CHAPTER 12 AND 13 CASES: Before filing any motion for proposed use, sale or lease of property in a Chapter 12 or Chapter 13 case, the movant shall consult with the trustee and determine, if possible, whether the trustee will consent to the motion. Any such motion shall contain a recital to the effect that such consultation has taken place and, further, shall recite the trustee's position, if known to the movant.

SALES OF PROPERTY SUBJECT TO SECURITY INTEREST: Any motion to sell property that is subject to one or more claims of security interest(s) shall set forth the identity of the creditor(s), the description of property subject to such claim(s), and the amount of such claim(s). Compliance with this rule shall not constitute waiver of the movant's right to object to the validity or priority of such liens.

Deconsolidation/Separate Administration (LBR 1015-1(b))

Separation of Estates: A joint petition that was filed and jointly administered pursuant to LBR 1015-1(a) may be separately administered upon motion by a debtor, trustee, other parties in interest or on the court's own initiative. Notice of the separation of the estates will be given to all parties in interest and will specify any additional case numbers to be used to reference the separate estates. If a debtor, trustee, or other party in interest wishes to separate the estates, the motion shall be filed pursuant to LBR 9007-1.

Fees Due Upon Separation: When a joint case is ordered to be administered separately based upon a request by the debtor, a fee will be charged equal to one half the current filing fee for the chapter in which the joint case was commenced. All other orders separating cases otherwise jointly administered will not result in the assessment of an additional filing fee.

Amended Schedules/Modified Plans: When a joint case is ordered to be administered separately, the debtors shall file amended schedules reflecting the financial status of the separate estates. If the case is filed in Chapter 11, 12, or 13, separate modified plans must also be filed.

RETURNED NOTICES/UNDELIVERABLE NOTICES

Notices of the meeting of creditors pursuant to §341 of the Code shall contain a return address for the attorney representing the debtor. If the debtor is pro se, the notices will be returned to the Clerk of Court. If a notice is returned to debtor's attorney as undelivered, the debtor's attorney shall be responsible for determining the correct address for the addressee on each returned notice. The debtor's attorney shall re-serve the notice and certify such service by filing a certificate of service. At the time of the certification, the debtor's attorney shall also provide the clerk with any corrected address. If corrected addresses are unavailable, counsel for debtor shall inform the clerk in writing, and the clerk is then authorized to remove any such address from the mailing list. If the debtor is pro se, the Clerk's Office will attempt to resolve any undelivered notices. If unable to locate a corrected address for a returned notice, the clerk is authorized to remove any such address from the mailing list. LBR 2002-1(g)

Master Mailing List/Matrix (LBR 1007-2)

GENERAL REQUIREMENTS: At the time of filing a voluntary petition or, in an involuntary petition, within 15 days following the entry of an order for relief, the debtor (or upon order of the court, petitioning creditor or partner) shall file a list of creditors that shall include in alphabetical order the name and last known mailing address for every scheduled creditor.

The master mailing list, commonly referred to as the matrix of creditors, shall include the agencies and officers of the U.S. Government required to be served pursuant to FRBP 2002(j). Addresses for proper notice to major agencies of the U.S. Government can be obtained from the **CLERK'S INSTRUCTIONS**.

If a federal tax debt is owed, all mailing lists shall include the address of the Internal Revenue Service office having responsibility for monitoring the case. Addresses for proper notice to the Internal Revenue Service can be obtained from the **CLERK'S INSTRUCTIONS**.

If the debtor is a partnership, the mailing list shall contain the name and current mailing address of each general and limited partner.

If the debtor is a corporation, the mailing list shall contain the names and current mailing addresses of the present officers and directors and, if known, the immediate past officers and directors.

The mailing list shall contain the name and last known address or place of business of each equity security holder, if applicable.

FORM OF MAILING LIST: The master mailing list, commonly referred to as the matrix of creditors, shall conform to the requirements found in the **CLERK'S INSTRUCTIONS**.

HELPFUL REMINDERS

- < All documents filed with the court must be on 8 ½ x 11 paper. Any attachments to claims shall be no larger than 8 ½ x 11 and stapled behind the claim in the upper lefthand corner.
- < Cover letters transmitting documents are not necessary unless requested to be used as an acknowledgment.
- < Manuscript covers should not be used.
- < Debtor-filed claims should be legible (typewritten) and contain full name and address of creditor including zip code. Please include the words "filed by debtor" in the box titled "Name of Creditor". Correct amount of the claim should be shown. Creditor must have been previously scheduled by the debtor and notified. Such claims should be filed at least 5 days prior to the confirmation hearing to give the Chapter 13 trustee time to include them in the calculation.
- < Pursuant to LBR 9013-1, at the time of filing a motion seeking any relief in this court, (except motions for relief from stay in Chapter 7, 13, and 12), the movant shall file a proposed order with the motion.
- < FRBP 9011 requires an attorney to list his/her name, address, and telephone number on every document filed with the court. Additionally, LBR 9011-1(b) requires the attorney's State Bar number on all pleadings filed with the clerk.
- < Documents submitted for filing should **NEVER** be duplexed (copied on both sides).
- < Orders requested by the court should be submitted within 5 days.
- < The judge's initials are a part of the case number and should be included as such on all documents when filing pleadings. Additionally, chapter type should be included in the caption on all pleadings. LBR 9004-2.
- < The caption on documents should be formatted with room for the filed stamp on the right side of the top of the first page.
- < On all schedules and statement of affairs, in the event the answer to the question is "Not Applicable" or "None", the debtor should indicate N/A or None, instead of leaving blank.
- < A fee of \$15.00 for payment of trustee's fee is due upon conversion of a case to Chapter 7.